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1943

File No. O Finance 43

Legal Department

A BRANCH

Subject:—Opinions undes the Bombay Finance Act, 1932

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Submitted.

2. This relates to the change over of the existing system of reading meters to the system of what is known as "continuous meter reading" by which reading of meters is spread over the whole month. The B.E.S.T. states that in the initial stage of introduction of this new system it would involve the question of adjustment of electricity duty because instead of preparing the bills for a month in some cases the bills will be for a period exceeding a month and in some cases for lessthan a month.

In his opinion No. 8167 dated 8th October, 1942, the R.L.A. suggested that the object in view could be achieved by gradually changing the dates reading of selected consumers in such a way that at no time there is a serious reduction or increase in the 'month' referred to in rule 8(1). The R.L.A's opinion was concerned in by Government (vide G.R.R.D. No.8836/28 dated 22nd December 1942) and on the lines of this opinion Government informed the Association of Electrical Undertakings, Bombay Province, that there could be a ~~xxxxxxx~~ reasonable difference of two or three days either way in respect of two consecutive readings i.e. by increase or decrease and consequently the object in view could beachieved by gradually changing

the dates of readings of selected consumers in such a way that at no time will there be a serious reduction or increase in the 'month' referred to in rule 8(1) of the Bombay Electricity Duty Rules.

2. The Bombay Electricity Supply and Tramways Co., however, for the reasons stated in its letter dated 16-1-1943 considers that the mode of reading meters suggested by Government would not solve the difficulty, firstly because the change would require several months for completion, and secondly because during this long period of transition some bills will cover 27 days for several months making the consumer eligible for lower rate of assessment with the resultant loss to Government, while in other cases bills may cover 33 days for several months which will give to consumers the cause of complaint against higher assessment. It is suggested that any period covering more than 15 days but less than 45 days may be considered a month; and that any period covering between 20 and 40 days will constitute a month. The B.E.S.T. & T. requests sanction of Government for affecting the proposed change in the following conditions:-

1.) No Bill for electrical energy consumed will cover a period less than 20 or more than 40 days since the meter was last read;

2.) During the transition period the assessment of Electricity duty leviable under the Act will be <u>based on the equivalent consumption, calculated pro-rata, in a month of 30 days.</u>

3.) In case any dispute arises regarding the Assessment of Electricity Duty during this transition period, B.E.S.& T. Co. undertakes to make good to the consumer or the Government as the case may be, any loss they may incur on account of the procedure adopted in assessing the duty leviable. The decision of the Collector of Bombay in all such disputes shall be final.

The R.D.office suggests that there is no objection to sanction the change over without amending the Act on the conditions proposed by the B.E.S.& T. Co., The R.L.A. is requested to advice whether the in terpretation offered by the B.E.S.& T. Coy. is correct.

3. As regards the first condition suggested by the B.E.S.& T., in R.L.A's opinion No.8167 dated 8-10-42 the R.D. was advised that "in respect of every two consecutive readings there could be a reasonable difference of 2 or 3 days either day i.e. by increase or decrease; but this cannot be stretched to include periods as short as 15 days or as long as 45 days with a view to effecting a sudden change in the method of reading meters". The B.E.S.& T. now proposes that theperiod for which the Bill would be prepared"will not be less than 20 or more than 40 days since the meter was last read"

This also involves ~~xx~~ a question of serious reduction or increase in the 'month' referred to in rule 8(1). Such a difference is not contemplated by rule 8(1) and consequently for the reason stated by the R.L.A. in his opinion No. 8167 dated 8th October 1942, the proposal of the B.E.S.&T. Coy. would not be consistent with the provisions of rule 8(1).

4. The second condition contemplates rule of 3 for assessing the electricity duty for the increased or decreased period on the basis of monthly consumption. It is the actual consumption that counts. Consequently, in view of R.L.A's No. 10807 dated the 15th December 1941, the mode of assessment of electricity duty calculated pro-rate on monthly basis cannot legally be supported. The proposal of the B.E.S.& T. Company cannot therefore, be supported

5. As the adjustment is for one billing period and since the B.E.S.& T. Coy. is prepared to make good the loss to the consumer or/ to Government, as the case may be, it is a question of policy for Government to decide whether the B.E.S.T. Coy. should be allowed the change over subject to the conditions mentioned by the Company, and particularly in view of the fact that Government would not have to suffer any loss

Id/- E.P.Bhawgara

MM 10/7- 14/4.

Office of the R.L.A.

The R.L.A. is unwilling to commit himself to the view taken a month may include any period from 20 to 40 days. But while the Company's proposal puts a severe strain on Rule 8 of the Bombay Electricity Duty Rules, this does not appear to be a case in which Government need insist on the strict letter of the law.

Sd/- P.N.M.
26/4

Remembrancer of Legal Affairs.

U.R.to R.D.,No. 3063,dated the 26th April 1943

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No. 8836-E/23.
Revenue Department,
Bombay Castle, 25th June 1943.

From

The Secretary to the Government of Bombay,
Revenue Department;

To

The General Manager,
Bombay Electric Supply and Tramways
Company, Limited.

Subject:- Electricity Duty.
Meter reading.
Change in system of, for calculating ---

Sir,

With reference to your letter, No.TKRA. 572/43 dated 16th January 1943, I am directed to state that Government has no objection to your effecting a change in the existing method of meter reading and billing provided that -

(i) nonbill for electrical energy consumed shall ~~in~~ cover a period of less than 20 or more than 40 days since the meter was read lasr;

(ii) the assessment, during the transitiion period, of electricity duty leviable under the Bombay Finance Act, 1932, shall be based on the equilavent consumption, calculated pro-rata, in a month of 30 days.

and

(iii) the Bombay Electric Supply and Tramways Company shall, in case any dispute arises regarding the assessm

Contd. p.7.

ment of electricity duty during the transition period, make good to the consumer or to Government, as the case may be, any loss they may incur on account of the procedure adopted in assessing the duty leviable, the decision of the Collector of Bombay, in all such disputes, being final.

Your obedient servant

D.A.Gadkari,

For Secretary to the Government of Bombay Revenue Department.

No.8836-E/28.
Revenue Department.
Bombay Castle, 25th June 1943.

Copies, with copies* of the Remembrancer of Legal Affairs' opinion, No.3063,dt. 26th April 1943, forwarded to :-

*The Commissioners of Divisions,
*The Collector of Bombay,
*All other Collectors,
*The Executive Engineer and Electrical Inspector, Bombay,
*The Electrical Engineer to Government,
The Remembrancer of Legal Affairs,
*The Accountant General,
*The Public Works Department, and
*the Finance Department,

with reference to Government Resolution,No. 8836/28 dated 22nd December 1942.

By order of the Governor of Bombay,

D.A.Gadkari,
For Secretary to the Government of Bom.
Revenue Department,

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The position regarding the ownership of the Hattersley Mill, Ghathopar has not been made sufficiently clear to this Government. Whether as mortgagees-in-possesion the Government of India can in law be regarded as full owners of the Mill is not free from doubt. We may however accept the assurance of the Government of India that the Mill for all practical purposes vests in them. To question their title and refuse to refund the urban immoveable property tax would be very embarrassing to the Government of India.

Sd/- P.N.M.

6/7.

Remembrancer of Legal Affairs.

U.R.to R.D., No. 4756, dated the 8th July 1943.

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R.I.No.6263/dt. 7-6-1943.

Submitted.

2. The Administrator, Ahmedabad Municipality, has reported that the joint owners of chawls in Ahmedabad City are trying to evade payment of the urban immoveable property tax by transferring rooms to the names of brothers, sons and other relations so as to make it possible for them to argue that the whole is not one building. R.D. is of the view that as the tax is to be levied on the building as a whole under the second proviso to sec. 22 of the Bombay Finance Act, 1932, there is no reason for any reduction in the rate of assessment of the tax on account of partitions though the total amount of the tax is liable to be recovered from all the sharers and that it is not necessary to amend the Act. That Deptt. therefore proposes to authorise the Collector to bring this fact to the notice of the public. But before this is done the papers are shown to the R.L.A. as suggested by the R.L.A.

3. Sec. 22 of the Bombay Finance Act, 1932 provides for levy of the urban immoveable property tax or buildings and lands. The first proviso to this sec. provides that the tax shall be levied and paid to the Prov. Govt. at the rate of the five per cent of the annual

letting value -

(a) in the City of Bombay on the buildings and lands the annual letting value of which does not exceed Rs.2000; and

(b) in other areas on the buildings and lands the annual letting value of which does not exceed such amount as the Provl. Govt. may, by notification in the official Gazette, declare. The second proviso provides that if any building consists of more than one tenement and such tenements are separately assessed to the property tax, the urban immovable property tax shall be assessed on the annual letting value of the building as a whole. It will thus be clear that even if ownership of the tenements in a building is transferred to the names of different sharers, the tax will be assessed on the annual letting value of the building as a whole. The joint owners will not therefore succeed in evading payments of the tax. Each room or tenement in a chawl cannot form a separate building and the tax will have to be levied on the building as a whole. It will, however, have to be apportioned amongst theseveral holders according to their holdings. cf R.L.A's No.6207, d.9/6/39 and No. 11829,d.14/11/39 in L.D. vol. O Finance/3240. There seems therefore

no objection to the Collector bringing this fact to the notice of the public. The papers may be seen and returned.

Sd/- P.S.Nadkarni
1/7.

S.A.S.

Reply may be as at A.

Id/- R.T.K.
1/7

A.L.R.

What is the meaning of tenement in Section 22 ? It has many meanings in Law. Halsbury gives many different definitions. Is there any definition of the term in the Finance Act or the Municipal Acts ? One meaning is a part of a building occupied by a tenant. In the present case the different parts of the building are occupied by different owners. If that meaning is to be accepted, then the portion would be successful in loading a large part of the tax.

Was L.D. consulted before the opinion at page 7 has issued in 1940 ?

Id/-R.S.H.
7/7

S.A.S.

Office may put up papers as stated in the margin.

Id/- R.T.K.
7/7

Mr. Nadkarni.

Resubmitted.

P.T.O.

2. Please see R.L.A's Nos. 6207 dated 9/6/39 and No. 11829, dated 14/21/39 when the question has been fully considered.

The opinion could not be put up earlier as the L.D.Vol. was in Poona Office in another case.

Necessary reference is also made in Office note and papers put up as directed.

Id/- P.S.N.
8/7

S.A.S.

Id/- R.T.K.
9/7.

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Office of the R.L.A.

Seen and returned.

2. Attention is invited to R.L.A's opinion No. 11829, dated the 14th November 1939.

Sd/- P.N.M.

12/7

Remembrancer of Legal Affairs,

U.R.to R.D., No.4855, dated the14th July 1943.

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